

1 KYLE SCHUMACHER (BAR #121887)  
 2 kschumacher@perryshields.com  
**PERRY, SHIELDS, CAMPBELL,**  
**FLOYD, PLLC**  
 3 227 N. Loop 1604 E. Ste. 130  
 San Antonio, TX. 78232  
 503-482-8137 ph  
 4 281-715-3209 fax

5 Attorneys for Plaintiff  
 6 Evan Gerald Miler

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF OREGON – PORTLAND DIVISION

9 CASE NO. 3:20-cv-00340

10 Evan Gerald Miler,

11 Plaintiff,

12 v.

13 TD Bank USA, National Association; and  
 14 DOES 1 through 100 inclusive,

15 Defendants.

PLAINTIFF'S COMPLAINT FOR DAMAGES:

1. Violation of the Telephone Consumer Protection Act

16 COMES NOW Plaintiff Evan Gerald Miler (“Plaintiff” or “Miler”), an individual, based  
 17 on information and belief, to allege as follows:

18 **INTRODUCTION**

19 1. This is an action for damages brought by an individual consumer for Defendant's  
 20 violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.* (hereinafter  
 21 “TCPA”), which prohibits the use of automated dialing equipment when making calls to  
 consumers.

22 2. Plaintiff brings this action against Defendant TD Bank USA, National  
 23 Association (hereinafter “TD Bank”) for its abusive and outrageous conduct in connection with  
 24 debt collection activity.

25 3. While many violations are described below with specificity, this Complaint  
 26 alleges violations of the statutes cited in their entirety.

27 4. The TCPA was designed to prevent calls like the ones described herein, and to

1 protect the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to  
 2 give consumers a choice as to how corporate entities may contact them and to prevent the  
 3 nuisance associated with automated or prerecorded calls.

#### **JURISDICTION & VENUE**

4       5. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47  
 5 U.S.C. § 227.

6       6. This venue is proper pursuant to 28 U.S.C. §1391(b).

#### **GENERAL ALLEGATIONS**

7       7. Plaintiff Evan Gerald Miler is an individual residing in the state of Oregon and is  
 8 a “debtor.”

9       8. At all relevant times herein, Defendant TD Bank engaged via mail, email, and  
 10 telephone, in the business of collecting a debt from Plaintiff, and a “consumer debt.”

11       9. At all relevant times, Defendant acted as a “debt collector.”

12       10. Plaintiff had opened an unsecured credit account with TD Bank in approximately  
 13 March of 2019.

14       11. The credit account Plaintiff opened with Defendant TD Bank was extended  
 15 primarily for personal, family or household purposes and is therefore a “debt.”

16       12. Defendant TD Bank has been attempting to collect on a debt that originated from  
 17 monetary credit that was extended primarily for personal, family, or household purposes, and  
 18 was therefore a “consumer credit transaction.”

19       13. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant  
 20 TD Bank arising from what Plaintiff is informed and believes was a consumer credit transaction,  
 21 the money allegedly owed was a “consumer debt.”

22       14. Plaintiff is informed and believes that Defendant is one who regularly collects or  
 23 attempts to collect debts on behalf of itself and is therefore a “debt collector.”

24       15. Plaintiff’s account was an unsecured loan and Plaintiff began making payments  
 25 on the account before he became financially unable to keep up with the monthly payments.

26       16. Defendant TD Bank began contacting Plaintiff in or about June of 2019 to  
 27 inquire about the status of the account and to collect on the payments that were no longer being  
 made.

28       17. Plaintiff retained counsel to assist in dealing with the TD Bank debt and to seek

some type of financial relief.

18. Counsel for Plaintiff sent a letter of revocation to TD Bank on or about June 20, 2019 (the “First Revocation”).

19. Plaintiff believes his revocation and representation letter was received by TD Bank on June 28, 2019.

20. Plaintiff informed TD Bank, through his letter of revocation, that he was revoking his consent, if it was previously given, to be called on his telephone.

21. Plaintiff was frustrated that TD Bank continued to make unsolicited calls to his cellular telephone after contacting TD Bank to revoke his consent.

22. Plaintiff denies that he ever gave his express consent to be contacted on his cellular telephone by automatic dialing machines and pre-recorded messages.

23. Counsel for Plaintiff sent a second letter of revocation to TD Bank on or about September 14, 2019 (the “Second Revocation”).

24. Despite the First Revocation and the Second Revocation (hereinafter, collectively, the “Revocations”), Defendant TD Bank, or its agent(s), continued to contact Plaintiff between approximately June 20, 2019 through February 7, 2020; the type of contact was through phone calls to Plaintiff on his cellular telephone.

25. Despite notice being sent, Defendant continued to contact Plaintiff on his cellular telephone regarding collection of his outstanding debt.

26. TD Bank ignored Plaintiff's letter of representation and continued to contact him for at least three (3) months following receipt of Plaintiff's First Revocation and continued to contact him for at least one (1) month following receipt of Plaintiff's Second Revocation.

27. Despite being aware of Plaintiff's First Revocation on June 20, 2019 and Plaintiff's Second Revocation on September 14, 2019, TD Bank continued to contact Plaintiff on his cellular telephone.

28. TD Bank's calls were frequent in nature and continued despite receiving written confirmation that Plaintiff was revoking any consent that may have been previously given to be called on his cellular telephone.

## **FIRST CAUSE OF ACTION**

(Violation of the TCPA)

(47 USC § 227)

(Against Defendant and Does 1-100)

1       29. Plaintiff re-alleges and incorporates the allegations in each and every paragraph  
 2 above by reference as if fully stated herein.

3       30. Since at least June of 2019, Defendant started calling Plaintiff's cellular telephone  
 4 requesting that payment be made on the account Plaintiff held with Defendant.

5       31. Plaintiff informed Defendant that he had revoked consent to be contacted by TD  
 6 Bank and was represented by counsel on at least one of the numerous telephone calls he received  
 7 in 2019.

8       32. TD Bank continued to call Plaintiff frequently after Plaintiff withdrew his consent  
 9 to be contacted by an automatic dialing machine.

10      33. Defendant would contact Plaintiff frequently regarding payment on the account.

11      34. Defendant placed the above cited calls using an artificial or prerecorded voice to  
 12 deliver the collection messages without Plaintiff's prior express consent.

13      35. Defendant contacted Plaintiff on at least one hundred sixty-nine (169) separate  
 14 occasions after Plaintiff informed Defendant that he did not wish to be contacted on his cellular  
 15 telephone and withdrew any prior consent that may have been given.

16      36. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing  
 17 system" as defined by 47 U.S.C. §227(a)(1).

18      37. These calls were made to Plaintiff's cellular telephone and were not calls for an  
 19 emergency purpose as defined by 47 U.S.C. §227(b)(1)(A).

20      38. These telephone calls by Defendant, or its agent(s), violated 47 U.S.C.  
 21 §227(b)(1)(A)(iii).

#### **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment as follows:

- 23     a. An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C.  
 24       §227(b)(3)(B) & (C) for each and every violation.
- 25     b. Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct  
 26       in the future.
- 27     c. Pursuant to 15 U.S.C. 1692(k) both actual damages and statutory damages in an  
 28 amount to be proven at trial.

Respectfully submitted,

1  
2                   **PERRY, SHIELDS, CAMPBELL,**  
3                   **FLOYD, PLLC**

4 Dated: March 3, 2020

/s/ Kyle Schumacher

Kyle Schumacher  
5 Attorneys for Plaintiff

6

7                   **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands trial of this matter by jury.

9

10

11                   **PERRY, SHIELDS, CAMPBELL,**  
12                   **FLOYD, PLLC**

13 Dated: March 3, 2020

/s/ Kyle Schumacher

Kyle Schumacher  
14 Attorneys for Plaintiff